

LABOUR DEPARTMENT

The 13th August/6th December, 1976

No. 7117-4 Lab-76/33033—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Mohinder Singh and Associates, 15/3, Mathura Road, Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No 10 of 1973

Between

SHRI SURINDER SINGH WORKMAN AND THE MANAGEMENT OF M/S MOHINDER SINGH
AND ASSOCIATES 15/3, MATHURA ROAD, FARIDABAD

AWARD

By order No. ID/FD/72/538, dated 5th January, 1973, the Governor of Haryana, referred the following dispute between the management of M/s Mohinder Singh, and Associates, 15/3, Mathura Road, Faridabad and its workmen Shri Surinder Singh to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of the services Shri Surinder was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Tribunal in response to the usual notices of reference sent to them and filed their pleadings.

The workman alleged,—*vide* claim statement filed by him through Shri R. N. Roy, President, Mercantile Employees Association Delhi, hereininafter referred to as the Association that he being employed as an Assistant Foreman by the management with effect from 5th August, 1970 on wages of Rs. 250/-P.M., his services were terminated by the later on 3rd August, 1972 on flimsy ground and that he was entitled to reinstatement with continuity of service and full back wages. He stated that the termination of his services by way of dismissal was wrongful, illegal, malafide, and against the principles of natural justice and that he had raised a demand on the management for his reinstatement which led to this reference. He averred that he was a member of the Association.

The management raised a preliminary objection,—*vide* written statement filed by them that the Association was not a representative union and had no following of majority of the workman employed in their (management) concern and that neither the members of the Association nor the workmen of the (management) concerned ever espoused or supported the cause of the claimant and that the matter referred to this Tribunal could not be said to be an Industrial dispute and the reference was as such bad in law. They stated that there was never a dispute between the workman individually on one hand and the management on the other and the reference was liable to be rejected on this ground as well. On merits they while admitting the workman to be in their service as Assistant Foreman gave out that he being well acquainted with English language, refused to receive the official communication sent to him in that language, and that he being charge sheeted was found to be guilty by a Board of enquiry consisting of Shri Mohinder Singh, A. S. Sethi, R. Sondhi, Zila Singh and Shri S. C. Rishi, of insubordination and was dismissed from service as a result of these findings.

The workman controverted the plea of the management and reiterated the allegations, made by him in the claim statement,—*vide* rejoinder filed by him with the result that the following two issues were framed on pleas of the parties,—*vide* order dated 29th March, 1973.

- (1) Whether the subject matter of the reference is not an industrial dispute and the Mercantile Employees' Association had no locus standi to raise this dispute on behalf of the workman concerned?
- (2) Whether the termination of services of Shri Surinder Singh was justified and in order? If not, to what relief is he entitled?

I have heard the learned authorised representatives of the parties with reference to the evidence led by them on record. I decide the issues as under:—

Issue No. 1. —

The management examined Shri Mohinder Singh one of the proprietor of M/s Mohinder Singh

and Associates as M.W. 1 who deposed that there was no union of the workmen of his factory and that the Association had no representative character in respect of the workmen of his factory. This part of his statement remained un rebutted and Shri R. N. Roy authorised representative of the workman admitted that no meeting of the workers of the factory of the management was called to espouse the demand raised by him on behalf of Shri Surinder Singh. It would thus appear that on his own showing the individual demand raised by the workman as the management for his reinstatement was not espoused or sponsored by the workmen or even the union of which he was a member.

Shri R.N. Roy appearing for the workman, however, contended with reference to the authorities reported as 1958-I-LLJ-500(S.C.) 1965-I-LLJ-1965 (S.C.), and 1975-II-LLJ-352 (S.C.) that such an espousal was not necessary and the association as a union of workmen was competent through him its President to raise a demand on the management leading to this reference. I have considered the case law relied on by Shri R.N. Roy and find the same as inapplicable to the facts of the case. There is little doubt that it is found stated in all these authorities that individual dispute can be sponsored by the union of which the workman is a member in order to bring it within the definition of an industrial dispute as defined in section 2 (k) of the Industrial Disputes Act, hereinafter referred to as the Act, yet it is nowhere laid down that the union could sponsor the individual demand without taking the decision in a meeting of its members called for that purpose or without consulting the workman of the industry run by the management of which the claimant was a workman. The espousal of a demand by a union necessarily implies decision of a substantial number of workmen, members of the union to espouse the demand, and the authorities reported as 1975-I-LLJ-293 (Calcutta High Court), and 1973-Current Law Journal 772 (Punjab and Haryana High Court) relied on by the management well supports this proposition. I thus hold that the union as such was not competent to raise the demand on behalf of the workman Shri Surinder Singh through its President Shri R.N. Roy, in absence of an authority from the workmen of the factory run by the management and decide the second part of this issue in favour of the management.

There is however, another aspect of the matter relating to first part of this issue. It is conceded on both sides that since the additions of the provisions of section 2-A of the Act a dispute between an individual workman and his employer connected with or arising out of his discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute not with standing that no other workman nor any union of workmen is a party to the dispute. An individual workman can thus obviously raise a demand on the management in respect of his dismissal from service, while claiming reinstatement independently, even if no other workman or any union of workmen espoused his cause and that such a demand shall constitute an industrial dispute. I in the instant case find an authority executed by the workmen in favour of Shri R.N. Roy, President of the association to raise a demand on the management and claim his reinstatement and the same as accepted by the later. A workman is entitled to be represented under section 36, clause (1) (a) of the Act by an officer of a registered trade union of which he is a member.

There is, however, not an iota of evidence on record to prove that Shri Surinder Singh was a member of the association of which Shri R.N. Roy was the President, so much so, he himself did not make any statement in this connection even though he was put to proof thereof by the management by way of their denial of the allegations made by him in this connection. A mere mention in the power of attorney remaining unexhibited and unproved that he had been entered as a member of the association as Serial No. 7197 does not legally prove his membership of the association. Even otherwise the demand dated 10th August, 1972 attached as an annexure A to the reference was admittedly raised by the Association through its President on behalf of the workman and not by the later individually and in absence of evidence of an authority to the President of the association, by a substantial number of workmen of the factory run by the management, the same obviously does not constitute an industrial dispute, even though if the demand had been raised by the workman in his individual capacity it could have been an industrial dispute under section 2-A of the Act. I therefore decide the first part of this issue as well in favour of the management while holding that the subject matter of the reference is not an industrial dispute.

Issue No. 2. It was frankly conceded by Shri Roop Chand Sharma, learned authorised representative for the management that the enquiry held against the workmen by the Board into the charges of insubordination, was illegal and not in accordance with the procedure and principles of natural justice laid down from time to time by the Hon'ble Supreme Court, in as much as, the findings were made on the basis of the statement of the workman alone who had been cross examined at length by the members of the Board, without examining any witness for the management. The management thus relied on evidence led by them on merits in the Tribunal relating to the misconduct of insubordination of the workman. The workman was admittedly charged for insubordination, for his having refused to receive letters No. 7333 dated 23rd July, 1972 and No. 7459 dated 25th July, 1972 Exhibit M-38 and Exhibit M-39 sought to be served on him by the management. The management examined Shri Mohinder Singh their Proprietor who deposed that even though the workmen had been receiving letters in English script from them earlier, a number of times and had been submitting his progress report himself in that script, declined to accept letters Exhibit M-38 and M-39 in that script on an excuse that these should be served on him with their Hindi Translation. He for instance brought on record, leave application Exhibit M-3 written in English script made by Shri Surinder Singh, letters, Exhibit M-8, M-9 both in English script received by the workmen under his own signatures without objection and the progress reports Exhibit M-11

to M-33 made by the workman himself in English script. Even the workman appearing as his own witness admitted that he had been receiving letters in English script earlier without objection and did not request for supply of Hindi Translation thereof. The only explanation made by him in this connection was that he had then a friend who was good in English and should use to read this letter to him, perhaps meaning that the friend was not available to him now. This explanation is highly unconvincing. The progress report written by him in English script Exhibit M-11 to M-33 are of the period from 24th April, 1972 to 24th May, 1972 and the letters M-38 and M-39 are admittedly dated 23rd July, 1972 and 25th July, 1972 and in absence of any explanation it is difficult to believe that the friend of the workman available to him earlier was not available to him two months after. At any rate there is no explanation of his ability to write the progress report Exhibit M-11 to M-33 in English script and his ability to read the letters Exhibit M-38 and M-39 in that script. The irresistible conclusion under the circumstances is that the workmen intentionally refused to receive the letter Exhibit M-38 and M-39 even though he could well read and understand them and that he did so in order to disobey the lawful orders of the management while feeling aggrieved of the warning that had been administered to him from time to time by them.

The management have no certified standing orders of their own and as such the Model Standing orders of Haryana Government applied to them. Wilful insubordination or disobedience to any law full and reasonable orders of the superior alone constitute a misconduct under clause 20(1)(a) of the Model Standing Orders and render the workman liable to dismissal under clause 20(2) of the same.

The Hon'ble the Supreme Court in an indetical case reported as Supreme Court Labour Judgement (1950 to 1967), Vol IV, page 2550 held such an Act of the workman as misconduct of insubordination rendering him liable to dismissal, with the following observations :—

“Besides, we may incidentally say that, even on the merits the conclusion of the Labour Appellate Tribunal appears to be patently erroneous. The sequence of events clearly indicates that the refusal of the respondents to accept the office order was deliberate. By their petition presented to the appellant on July, 7, 1954, the respondents and their colleagues had clearly told the appellant that unless their demands were met they would not be prepared to work the security arrangement as desired by the appellant. The statement made by the bearer, Ajamdar Panday, clearly shows that one of the durwans accepted the order while the others refused; and it also appears in evidence that the durwan who accepted the order got it explained by a clerk and that when the contents of the order were known to the other durwans they refused to take it. The explanation given by the respondent that the bearer had told them that if they refused to take the order they would be sent for by the appellants manager and the order would be explained to them is clearly an after-thought. It is significant that the charge sheet which was served on the respondents was in English and they did not refuse to accept it on the ground that they did not know what it contained. It is thus clear that, having referred to the broad facts proved in this case, the conclusion of the Tribunal was obviously right and the view taken by the Labour Appellate Tribunal, is patently erroneous; but, as we have already observed, the Labour Appellate Tribunal had no jurisdiction to deal with questions of fact and that is the principal legal argument against the validity of the order passed by it”.

It would thus appear that on facts indetical to the facts of the instant reference the dismissal of the workman was held to be justified and in order. I therefore, decide this issue also in favour of the management.

The result is that the dismissal of the workman is fully justified and in order and he is not entitled to any relief. I answer the reference while returning the award in these terms.

The 9th July, 1976.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

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No. 890, dated 9th July, 1976.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.